

## **9 FAM 41.59**

### **Professionals under the North American Free Trade Agreement.**

*(TL:VISA-177; 04-30-1998)*

#### **(a) Requirements for classification as a NAFTA professional.**

*(TL:VISA-88; 4-22-94)*

An alien shall be classifiable under the provisions of INA 214(e) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) In the case of citizens of Mexico, the consular officer has received from INS an approved petition according classification as a NAFTA Professional to the alien or official confirmation of such petition approval, or INS confirmation of the alien's authorized stay in such classification; or

(3) In the case of citizens of Canada, the alien shall have presented to the consular officer sufficient evidence of an offer of employment in the United States requiring employment of a person in a professional capacity consistent with NAFTA Chapter 15 Annex 1603 Appendix 1603.D.1 and sufficient evidence that the alien possesses the credentials of that profession as listed in said Appendix; or

(4) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

[Added by 58 FR 68526; Dec. 28, 1993.]

#### **(b) Visa validity.**

*(TL:VISA-88; 4-22-94)*

The period of visa validity of a visa issued pursuant to paragraph (a) of this section may not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section. The approval of a petition by INS does not establish that the alien is eligible to receive a nonimmigrant visa. The period of validity of a visa issued pursuant to subparagraph (a)(3) of this section may not exceed the period established on a reciprocal basis.

[Added by 58 FR 68526; Dec. 28, 1993.]

**(c) Temporary entry.**

(TL:VISA-177; 04-30-1998)

*Temporary entry means an entry into the United States without the intent to establish permanent residence.* The alien must satisfy the consular officer that the proposed stay is temporary. A temporary period has a reasonable, finite end that does not equate to permanent residence. The circumstances surrounding an application should reasonably and convincingly indicate that the alien's temporary work assignment in the United States will end predictably and that the alien will depart *upon completion of the assignment*.

[Added by 58 FR 68526, Dec. 12, 1993 and Amended by 63 FR 10304, Mar. 3, 1998.]

**(d) Labor disputes.**

(TL:VISA-88; 4-22-94)

Citizens of Canada or Mexico shall not be entitled to classification under this section if the Attorney General and the Secretary of Labor have certified that:

(1) There is in progress a strike or lockout in the course of a labor dispute in the occupational classification under this section at the place or intended place of employment; and

(2) The alien has failed to establish that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout.

[Added by 58 FR 68526; Dec. 28, 1993.]

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**9 FAM 41.59 Related Statutory Provisions**

**INA 214(e)(2) as amended by section 341 of the NAFTA Implementation Act, Pub. L. 103-182**

(TL:VISA-88; 4-22-94)

(2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation

with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15). The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5), the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of NAFTA.

(3) The Attorney general shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA....

(4)....

(5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 212(m), in the case of a registered nurse, or the application requirement of section 212(n), in the case of all other professions set out in Appendix 1603.D of Annex 1603 of NAFTA, and the petition requirement of subsection (c), to the extent and in the manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 212(n), and the Attorney General, with respect to subsection c.

[Added by Pub. L. 103-182, sec. 341, 107 Stat. 2116, 8 U.S.C. 1184, Dec. 8, 1993.]

### **INA 214 as amended by sec. 341 of the NAFTA Implementation Act, Pub. L. 103-182**

*(TL:VISA-88; 4-22-94)*

(j) Notwithstanding any other provisions of this Act, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person, who is involved in the strike or lockout. Notice of determination under this subsection shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this subsection, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of such agreement.

[Added by Pub. L. 103-182, sec. 341, 107 Stat. 2116, 8 U.S.C. 1184, Dec. 8, 1993.]

**See also 9 FAM 41.59 Exhibit II for Chapter 16 of NAFTA.**